

Dear Manekaji,

30th June, 2016

We are writing to you with reference to the Draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 which has been put up for comments by your Ministry.

Despite multiple questions being asked in Parliament on the issue of organised sexual trafficking rackets prevailing in orphanages and the vulnerable status of children in such institutions, the problem still prevails. The scale and pervasive nature of sexual exploitation of children is corroborated by studies conducted by your Ministry which estimates that there are 3 million people involved in sex work across the country, of which an estimated 40% are children, some as young as 5 years of age.

The problem does not end there as several alarming trends such as child sex tourism, paedophilia, sexual trafficking rackets in orphanages, prostitution in pilgrim towns and tourist destinations and cross-border trafficking have been on the rise in recent years putting our children at further risk. A 2002 report by the National Human Rights Commission states that 40% of the traffickers admitted that they had trafficked in children, of which almost 80% stated that the purpose was commercial sexual exploitation. Back in 2008, the Government acknowledged the gravity of child trafficking and sexual exploitation in the foreword to the India Country Report:

'There has been a significant shift in the perception of the problem of sexual exploitation of children and adolescents, especially through devious means of trafficking, by seeing it not just as a law enforcement issue, but as a heinous crime which violates basic human rights, including their right to live with dignity and self-respect.'

The Draft Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 which has been put up by your Ministry to prevent the trafficking of children and to provide protection and rehabilitation to the victims of trafficking unfortunately suffers from legislative lacunae and a flawed consultation process.

The Draft Bill, as it stands, suffers from the following legislative lacunae:

- i. There is no definition of '*trafficking*' in the Draft Bill.
- ii. The Draft Bill does not state what forms and purposes of trafficking it will cover since no offence that amounts to trafficking is mentioned in the Draft Bill.
- iii. The Bill in its present form does not create a deterrence for the crime of Trafficking and is not inclusive of the already existing laws.
- iv. It lacks commitment on Prevention and Rehabilitation.
- v. There is no section in the Draft Bill which suggests that it is going to repeal the Immoral Traffic (Prevention) Act, 1956 (ITPA), so it is not clear whether the Draft Bill is in addition to the ITPA or is intended as a replacement of the ITPA.
- vi. If it is intended as a replacement of the ITPA, the provisions of the ITPA must find a place in the Bill.
- vii. There is a need to define many more terms within the Bill, such as '*sexual exploitation*', '*sex tourism*', '*pornography*', '*brothel*' and '*public place*'.
- viii. The Draft Bill does not recognize trafficking of children for domestic servitude by placement agencies an offence.
- ix. The Draft Bill seeks to override all other laws even if its provisions are inconsistent with such other laws. This is a serious issue requiring attention as matters governing rehabilitation of children will have to be addressed through the Juvenile Justice Act, 2015 and the mechanisms set up there under.

- x. The Draft Bill does not make mention of the Anti-Human Trafficking Units (AHTUs), reporting of missing children to AHTUs or treatment of cases of children missing for more than a certain period as a case of trafficking.
- xi. The Bill lacks emphasis on Monitoring and Accountability necessary for effective implementation of any law.

The procedural process followed in seeking comments and consultation to the Draft Bill is flawed. The Draft Bill has been put up for public comments over the Ministry's website without due regard being given to the decisions taken in the meeting of the Committee of Secretaries (CoS) held on 10 January, 2014 under the chairmanship of the Cabinet Secretary on the Pre-Consultation Policy (PLCP) to be followed while formulating principal and sub-ordinate legislation.

The PLCP explicitly states that:

- i. *"Every draft legislation or rules, placed in public domain through pre-legislative process should be accompanied by an explanatory note explaining key legal provisions in a simple language".* **This has not been done.**
- ii. *"The Department/Ministry concerned might, in addition to placing the proposal in public domain, also hold consultations with all stakeholders. However, the degree of participation and mode of consultations may be decided by the Department/Ministry concerned and may vary according to the nature of the subject and the potential impact on those who will be affected by such legislation."* **This has not been done.**
- iii. *"The Department/Ministry concerned should publish/place in public domain the draft legislation or at least the information that may inter alia include brief*

justification for such legislation, essential elements of the proposed legislation, its broad financial implications, and an estimated assessment of the impact of such legislation on environment, fundamental rights, lives and livelihoods of the concerned/affected people, etc. Such details may be kept in the public domain for a minimum period of thirty days for being proactively shared with the public in such manner as may be specified by the Department/Ministry concerned". **This has been done only partially.**

In light of the above facts, we would urge you to consider a more detailed consultative approach in combating the sexual exploitation of children through trafficking.

1. The consultation process to obtain comments from the public on the Draft Bill must be extended. In the meanwhile, the Ministry should hold an Open House Pre-Consultation on the Draft Bill with the participation of all the necessary stakeholders like the National Coalition to Protect Our Children (NCPOC). The comments submitted by the stakeholders should be made available publically till the Bill is finalised and tabled in the Parliament.
2. The Ministry should strictly follow the guidelines laid down by the meeting of the Committee of Secretaries (CoS) held on 10th January, 2014 under the Chairmanship of Cabinet Secretary on the Pre-Legislative Consultation Policy (PLCP).
3. The Ministry should take into consideration the existing provisions under the Immoral Traffic (Prevention) Act, 1956 and the extensive consultations which were held on the ITPA (Amendment) Bill, 2006. There are existing provisions under the Indian Penal Code (IPC) under s. 370, s.372 (selling minors for purpose of prostitutes), s.373 (buying minors for purposes of prostitution), s.339 (wrongful restraint) and s.340 (wrongful confinement). With the enactment of the Criminal Law (Amendment) Act of

2013 (in 2013), for the first time there were very specific provisions on human trafficking in India. These reforms reflect a step towards aligning the country with its obligations under the Palermo Protocol. It does so by redefining human trafficking under Section 370 of the IPC, where in it draws upon the definition in the UN Trafficking Protocol.

The Pre-Consultation should take into consideration the above facts and ensure the Draft Bill is reflective of this.

Sincerely,



Rajeev Chandrasekhar



Smt. Maneka Gandhi

Hon'ble Minister for Women & Child Development

Government of India

New Delhi